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PREVENTIVE LEGISLATION IN RELATION TO CRIME.

The true object of Municipal Law is to accomplish the ends of justice. In this country—consciously or unconsciously—the constitutions have been formulated with that portion of the Declaration of Independence in view which declares that all men are created equal, and to each attaches as inalienable rights the right to life, liberty, and the pursuit of happiness.

They are equal in their creation. Each is conceived and born of the force attendant upon the operation of the same physiological laws. Each is born to the earth. If the environments of one individual at the time of conception and up to birth, and the new environments after birth, are such that he has less capacity than another has to use the opportunities within his reach ; or, if the opportunities into which he is born are less favorable than are those that surround another, the right to natural birth-equalities remains. Each may provide for life, enjoy such liberty, and seek to secure substantial happiness to the extent of his ability, not obstructing any other in the same pursuit. The happiness must be substantial and not chimerical ; such as will tend to preserve life, liberty, and happiness for all as well as for each. It is in the laws of creation, in a right to enough of earth to enjoy life and liberty and in the use of such opportunities as come to them to the extent of their capacity equally with others, that individuals are equal ; not in capacity. As soon as one begins to infringe on the rights of another, or seeks to obstruct him in the enjoyment of his rights, inequality begins. The earth is large enough and has productive elements enough to support all who come into it, if each uses his opportunities judiciously ; and

among the opportunities to be so used is the procreation of the race. Injudicious use of opportunities in any relation brings inequality, and injustice results. This applies to government as well as to persons.

The true purpose of legislation should be, the formulation of such laws as will prevent—as far as is possible—such injudicious use of opportunities by each individual in providing for life, in exercising liberty, and in seeking substantial happiness, as will hinder others in their rights; and in this way tend to preserve equality. Men have injudiciously used opportunities and have infringed on the rights of others until inequalities exist, and among the outgrowths have come criminals and crime. Not to establish justice, but to preserve public order, the Law has sought to vindicate justice by vengeance on the perpetrators of injustice, by infliction of penalties as punishment; and when the infliction is complete to turn the offender loose among his fellows, regardless of his disposition toward the preservation of equality of rights; whether his impulses are to thenceforth do justice or injustice.

Under the social conditions and the laws as they are, the *convicts* for crime number about one in a little over seven hundred of population, and the *criminals* number one in about four hundred. In the metropolitan centres they number one in less than three hundred. But far more appalling than this is the increase in the savagery that attends the commission of crimes, as well as the reckless boldness displayed by criminals, and the helplessness of peaceable individuals in all cases, and of the public in many cases, to defend or protect themselves. Neither the person of man, woman, or child, or the property of individuals or of government, is safe anywhere at any time. A comparatively small per cent. of the perpetrators of offences are apprehended, convicted, and subjected to the legal penalties. Forty years ago there was about one criminal in 3500 of population; and the amazing increase to the present proportion imperatively demands immediate and vigorous action to

find the causes and remove them, if we are to enjoy anything of the inalienable rights to which we are born and which we can retain only by a judicious exercise of them. Statistics gives us arrests and convictions ; but that does not give us more than one-tenth of the numbers who violate the laws. There is an undercurrent, floating thousands of offenders, of which evidence, legally available, only occasionally comes to the surface.

The words "individual liberty," "personal liberty," "the rights of the individual," etc., may mean something or nothing, depending on the conditions in connection with which we use them. The law itself pays little attention to them under some conditions ; under some others it allows them to be so construed as to destroy justice and overturn the public order. In this latter construction there exists a fallacy, and overwhelming danger if it be persisted in.

Formerly, severe penalties were inflicted. Recently, educational means—a sort of university course even—has been adopted for some convicts in some localities ; but crime has not decreased under either method. We can look to the law only for relief and protection, and the law can afford it only by dealing with conditions as they actually exist, no matter what has created the conditions. The causes of existing conditions relating to crime will be found in the conditions themselves (paradoxical though it sounds to say it), and the law must so deal with the conditions as to remove the causes if there is to be any decrease in criminals and crimes. Mr. W. P. Andrews, in the October* *Forum*, advocates a return to severe penalties—to the vengeful element that will make the convict suffer, in place of the rose-water methods of the so-called reformatories.

In the January *Forum* Mr. Warren F. Spaulding replies, and in the *Forum* for April Mr. Andrews replies to him. While able and educational, neither article is fundamental.

It is a self-evident fact that no sewer can be cleaned by standing at the outlet and trying to purify the sewage, so

* 1891.

long as the inlet is supplied with a constantly-increasing quantity. No more can crime be reduced by punishing or trying to reform criminals so long as conditions exist that procreate criminals and crime faster than the law can arrest, and either punish or reform them. While we dispose of those existing and to exist in the best manner we can, public safety lies only in formulating and enforcing laws to remove the sources from which criminals and crimes come.

This presents the inquiry, What are those sources ?

The most prolific can be found in Class-Legislation, creating inequality in social and political conditions, and in unrestricted and unrestrained marriage among those who are wholly unfit to enter into the relation, or to perform the duties to offspring or society which that relation entails upon them. The offspring either inherits a criminal mentality, or one with defective moral perception, or it is born into an environment that creates one, or both. The law not only permits but aids in keeping open this source, and generally, it neglects to remove the offspring of the vicious and depraved from the care and training of the parents, as it should do, and so prevent their being reared to lives of crime, or so reared that crime is a natural result. The fallacious distinctions made by the law itself as to the "rights of the individual," in dealing with persons and conditions, as well as in the disposition it makes of the defective classes, *creates* conditions that lead directly to increase in the numbers in those classes, and to all the evils and disorders that flow from them.

What is a criminal? One afflicted with moral obliquity of vision. One who, no matter what may be his apparent condition of bodily health, has such an anatomical and physiological arrangement of organs, as produces a perverted moral perception, or fails to produce any of sufficient strength to enable him to avoid offence. No matter how clear his perceptions may be, he lacks will power to keep him honest. He is the victim of a constitutional disease, which can be removed only by such a constitutional revolution as will give him moral perception with will power to be

guided by it. He acquired what he has either by birth and subsequent environment, or by environment alone. As to him it is immaterial which. No matter when it manifests itself the defect is normal. He is dangerous to others from the time of offence onward ; and the law should isolate him from society and make him harmless and useful. There are occasional and accidental offenders who are not really criminals, whose final disposition should depend on the facts in the special case ; but with others, and the great majority, whether they should ever have liberty again should depend on whether a physical revolution occurs that gives them a moral perception that will prompt them to observe order, and a will power to obey the law. As to the source from which the criminal comes, the law should remove or prohibit it as far as human effort can avail. First, prohibit marriage by a known criminal, and others unfit for the relation ; second, remove children from the custody of parents whose care will create, or whose environment lead to, criminal mentality, or practices that prevent, or pervert, or destroy moral perception.

How can the law prevent improper marriages? Just as it prevents marriage between near relations, the feeble minded, the insane, those under legal age, etc. The liberty of the individual is not regarded by the law where the public peace or welfare is concerned or menaced, and the law looks only to prevention. Where children are neglected or cruelly treated, the law can take them from their parents and put them in some proper custody. Where surety of the peace is prayed, the threatening offender goes under bond or into jail. When a boat or boiler is unsafe, the owner is enjoined from using it until made safe. When a married person commits felony, the other party may have the contract annulled. The law forbids and limits the sale of spirits, in anticipation that crime may be found lurking in the glass, and in many ways personal rights are restricted. With equal right may it prevent probable crime or criminals in the marriage and intercourse of depraved, vicious, criminal, and unfit persons,

and to that end may establish a special board for inquest, as to applicants and license to marry, with ample powers, as it may and does in case of epidemics, markets, stock-yards, explosives, illuminants, provisions, contagious diseases, and many other cases where the public needs protection.

Personal liberty should be a conditional right—something to be enjoyed by the citizen on condition that he observes the public order, helps to maintain it, and exercises his citizen franchises according to law. If he makes a breach of the conditions, he should forfeit the right to liberty: be at once deprived of it, and be shut away from society and put into the service of the State; as a condition brought upon himself by himself; not as a punishment, or for vengeance, but as the legitimate operation of moral and political force put into operation by his own voluntary act, with knowledge beforehand. In this connection, the State cannot properly be required to consider his want of moral perception. If he has in him the elements of danger and has manifested it by crime, whether the cause be negative or positive, the danger is there, and that is ample cause for his isolation. It would be just as proper for the law to permit a defective and dangerous steam boiler to be pushed to the full capacity of a sound one in a public place, on the plea that the boiler is not to be blamed for being defective and dangerous, as to allow a defective and dangerous human machine to be so used by others, or to so act himself, as to injure or endanger others because he is not in fault for being defective. Pity and favors may be extended to him when put where he is no longer dangerous to the peace and order of the State; but the defective condition ought not to be considered a moment in the question of his removal from the public.

Under existing laws—generally—any one can marry. License is issued for the asking, and judicial and clerical dignitaries under its permission give vitality to the contract of marriage. The law regards marriage as only a contract.

Under sanction of law the parties can become the parents of offspring without any regard to their condition or fitness, physical, mental, social or pecuniary ; and generally, the more unfit they are the more numerous are their offspring. The law is careful of life, limb and health, in many cases, as I have said ; in licensing pilots ; clearing ships and boats for passengers ; the health of towns and cities ; the erection and sanitation of buildings ; the licensing and regulation of markets ; the running of trains ; the storage and sale of dangerous compounds ; in licensing druggists and doctors ; and in many other ways. Special boards of officials are charged with looking after and enforcing the law and prosecuting offenders. Even to hold some offices persons must undergo examination, prove a clear record, give bond and take an oath. To become a soldier and serve Government in learning how to kill people and destroy property according to discipline, one must be examined, found to be sound of body and mind, and take an oath. To be buried when dead often requires a permit from a competent authority after an examination. In case of contagious disease the burial must be private. In some cases the authorities take sole charge of the disposition of the dead. *To be qualified to bestow life and care for it, is more important than to know how to destroy it.* To prevent continuing injury to generations is of more importance than to prevent temporary injury to individuals.

Think of any position known to human society or human action, and the mind can fix itself upon none so important to the individual, to society and to government, as is that of parent and the responsible head of a family. No act recognized by the law is of such importance as that of marriage. Why, then, should not the State be proportionately careful of life and limb as it is in other cases ? With a soldier, for instance, the contract runs only *five years*. The Government might have to keep him in hospital all the time, but that is improbable. It keeps him under discipline all the time, whether he is in hospital or on duty. But the law will license the soldier—or any other man—for the asking, to

enter into a contract with a woman *for life*, under which he will be without restraint, and he may burden the State with deformed, diseased, demented, pauperized progeny, and through them taint whole generations, if he be unfit for a parent. What logic, justice, common sense or true liberty can there be in failing or refusing to have examinations and assurance of fitness, and refuse a license to the unfit in the most important case, and enforce it in the least important ?

Two reasons are given. One, that it would be an infringement of personal right ; and the other, that it would increase the social evil. Further it is said, it would be humiliating to submit to examination. Would it? We submit to it in one way before we can vote, or serve on a jury, and in every way on entering a naval or military school, and in many other cases. Persons who are at all fit to marry and become parents have nothing to fear. Those who are unfit have no right in any sense to burden the public or bring into life tainted offspring. That plea is groundless. The social evil can be restrained largely by a license system including a special board of examiners and health, and a special police, to regulate and keep the licensees within legal limits. A board to attend to this special duty—licensing—has never been tried under a special system, but only under supervision of the general police, and for that reason has not been successful. Under a competent board of health and a special police for the express purpose, as part of a license system—entirely separate from the general board of health and police,—the evil can be largely regulated and deprived of many dangerous and vicious elements now having full liberty. It being impossible to suppress it, it should be regulated as far as human laws can do it.

So can a like board, to investigate as to applicants for license to marry, limit and restrain largely the marriage of unfit persons. There is no crime known that is more heinous than to bring into the world a child affected with incurable disease, physical or mental ; and this includes those subject to hereditary taint from idiocy, insanity, crim-

inality, epilepsy, inebriety, scrofula, and vicious diseases, as well as those whose parents are immediately affected. There is no act more immoral than to assume the responsibilities of husband and wife, being unfit for the relation, and unable to properly perform the duties it imposes. Persons violating the provisions that should be made and marrying without examination and license, or cohabiting without marriage, or becoming parents of children viciously diseased, or of illegitimate children—all being offences that could not be concealed—should be dealt with as other criminals. They should forfeit liberty, be removed from society, be imprisoned and kept at industries for the State. Offenders would be largely in the minority, the majority would rule, and the disposition to offend grow less, when offence and detection meant civil death, with resurrection dependent on complete reformation.

It has been objected that these suggestions cannot be carried out, because enough prisons could not be built to hold the offenders; and if they could be, there would be more people on the inside than on the outside. That is a pessimistic view. It would take some years to bring the general opinion and legislation to the requisite standard, but they would gradually and certainly reach it, if the effort be once begun and persisted in, and men would wonder why it had not been done sooner. Like all radical reforms it would meet opposition, but being based on truth it would progress, and the common mind only needs to comprehend it to make it a fact accomplished. As it progressed asylums and prisons would decrease in population, and moral force would aid legal force. The change would be nothing like as radical as the change from polygamy to monogamy has been, or from religious despotism to freedom of conscience.

Common sense and common observation leave little if any doubt that if it once comes to be understood that an act of crime will operate to forfeit liberty and the offender will pass out from among his fellows to prison walls and to labor for the State, with no right to return, and that henceforth his

world will be within the prison walls, men will be cautious ; evil impulses will be held more in restraint. Not one crime would be committed where a hundred are now. Restoration to liberty might come on conditions, *but the conduct to create the conditions would be very largely a complete reformation.*

Penalties never have prevented and never will prevent crime, except in occasional individual instances. Largely, they are a barrier to reform when the State attempts to inflict them. Unlimited commitment disposes of the criminal, guards against progeny from him, decreases public danger in both directions, and offers guarantees for the future as against each one shut away ; while it makes the offender useful, gives him opportunity to reform, and he can again have liberty if reformed.

There is universal advocacy of education and reliance upon it as the certain source of ethical force ; as the universal panacea for all kinds of social and political disorder. Let us consider it briefly in connection with our subject.

Giving one an education, without giving him a practical knowledge how to use it as it is acquired, is a mere cramming. Education of a person of vicious mentality, unless it can be made to build up a dominant and active moral perception, is like stuffing with decaying food an already putrefying object. Education of one who has no moral perception or moral sense, while intellectual perception in other respects may be active, is like using a handsome but defective cannon in a battery, with the best explosives ; or a dangerous compound in a chemical process without the proper apparatus to secure safety. It is playing with fire in a powder magazine, or sharpening the claws and filing the teeth of the man-eating tiger, against the coming of hunger and a victim.

As a *cure*, it cannot be relied on. As an *experiment*, it is a necessity. First, to demonstrate whether the moral sense to rightly use it will be developed in its acquisition, so the subject will be a self-sustaining, orderly person, and if not, so he may be more useful to the State in the confinement to which it must subject him for safety if disorderly. Educa-

tion can only be a means to a right use of opportunities ; and such a use is the only means to a true civilization. Liberty is one of the opportunities ; but a right to liberty, and such a use of it as will preserve public order, are counterparts ; are interdependent. Without order, there can be no stable enjoyment of liberty. Therefore, the penalty of such abuse of liberty as disturbs order should be the forfeiture of the right to liberty. The law should be so made and should so operate. Education should be directed to the development of such mental balance as will induce and enable the recipient to so use liberty as to preserve order. And so of every other opportunity—use it to the most judicious advantage for the individual and for the community as an aggregate.

If, from ignorance or from want of moral perception or will power, or from vicious propensity, any one cannot avoid the wrong use of opportunities and disorder results, the motive goes for nothing—the result is dangerous—and the offender should be put out of the way where he can do no harm and can be made useful in his own support and that of his class. If the mental organization be such that it will receive education, and the education will create moral perception, and moral will to so apply it as to make the best use of opportunities in the struggle for life, liberty and happiness, this constitutes civilization to the extent of the education. But if the mental organism be such that moral perception and moral will are not created, the education will be a means to the creation of disorder more dangerous than comes from ignorance ; will give power to vicious propensities ; and will become a means to the destruction of civilization. In such a case liberty should be forfeited ; and the individual, under restraint, be made to put the education to the best use attainable as an apprentice to labor for the State.

The word education covers all acquisition of knowledge, of whatever sort. The mechanical manipulations of a laborer, skilled or unskilled, are his education to the extent of his knowledge. Scholastic education opens the view to

wider knowledge, to more extended opportunities ; but it is not true education unless, in its acquisition, the way to apply it in the use of the opportunities disclosed by it is also taught and acquired as a part of the education. It is this ability to make practical use of knowledge, and this ethical force to reach moral ends in the use, that enables education to produce civilization. Without such use, it becomes a means for producing the most dangerous criminals and cruel despotism.

Unless the acquisition of broader and higher knowledge produces ethical perception and operative force, it must and will produce the opposite. We might as well try to drive back an advancing fog by fighting it with our fists, as to try by any means to check the currents of crime and the increasing numbers of offenders, paupers and other defectives, while maintaining conditions that produce them faster than we can dispose of them.

Of course, there will be offenders and defectives as long as man exists. There will be cruelty and injustice, both in individuals and in legal methods. But there can be improvements and ameliorations in conditions, effecting limitations and restraints, far beyond anything that can come of the conditions we permit and submit to now ; and with them would come clearer moral perceptions and greater sense of safety, with a truer education, and a higher civilization as the legitimate counterpart.

C. H. REEVE.

Plymouth, Ind.